

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

DOES 1, 7, 8, AND 9, individually;
DOES 2, 4, 5, AND 6 individually;
and as taxpayers; DOE 3, a minor,
by DOE 3's next best friend, DOE 2,

Plaintiffs,

Case No. 09-C-0409

v.

SCHOOL DISTRICT OF ELMBROOK,
a.k.a. ELMBROOK JOINT COMMON SCHOOL
DISTRICT NO. 21,

Defendant.

DEFENDANT'S PROPOSED FINDINGS OF FACT

Defendant School District of Elmbrook, a.k.a. Elmbrook Joint Common School District No. 21 ("School District" or "District"), by its undersigned attorneys, submits these Proposed Findings of Fact in support of its Motion for Summary Judgment.¹

PARTIES

1. Defendant School District of Elmbrook is a municipal corporation located in Waukesha County, Wisconsin. (Plaintiffs' First Amended and Supplemental Complaint ("Am. Compl."), ¶ 7.)

¹ Several of the documents referenced in these Proposed Findings of Fact are already on record in this matter. Plaintiffs' First Amended and Supplemental Complaint ("Am. Compl.") can be found at docket entry no. 40. The Affidavit of Matt Gibson in Opposition to Plaintiffs' Motion for Preliminary Injunction ("Gibson Aff.") can be found at docket entry no. 22. The Affidavit of Brett Bowers in Opposition to Plaintiffs' Motion for Preliminary Injunction ("Bowers Aff.") can be found at docket entry no. 23. The Affidavit of Don LaBonte in Opposition to Plaintiffs' Motion for Preliminary Injunction ("LaBonte Aff.") can be found at docket entry no. 24.

2. Plaintiff Doe 1 is a 2009 graduate of Brookfield East High School whose graduation was held at Elmbrook Church. Doe 1 also attended the graduation of an older sibling at Elmbrook Church less than four years prior to the filing of this action. (Am. Compl., ¶ 22.)

3. Plaintiff Doe 2 is a parent of Doe 1 and Doe 3. Doe 2 attended the 2009 graduation of Doe 1 at Elmbrook Church. Doe 2 also attended the graduation of a sibling of Does 1 and 3 at Elmbrook Church less than four years prior to the filing of this action. (Am. Compl., ¶ 27.)

4. Plaintiff Doe 3 is a minor child of Doe 2. Doe 2 attended the 2009 graduation of Doe 1 at Elmbrook Church. (Am. Compl., ¶ 31.)

5. Plaintiff Doe 4 is a property tax payer in the District. (Am. Compl., ¶ 33.) Doe 4 is also a parent of children who may graduate from a District high school no earlier than 2016. (Am. Compl., ¶ 32.)

6. Plaintiff Doe 5 is the parent of Does 7 and 8. Doe 5 attended the graduations of Doe 7 in 2005 and Doe 8 in 2002 at Elmbrook Church. (Am. Compl., ¶ 34.)

7. Plaintiff Doe 6 is also a parent of Does 7 and 8. Doe 6 also attended the graduations of Doe 7 in 2005 and Doe 8 in 2002 at Elmbrook Church. (Am. Compl., ¶ 34.)

8. Doe 7 is a 2005 graduate of a high school in the District who attended graduation at Elmbrook Church in 2005. (Am. Compl., ¶ 41.)

9. Doe 8 is a 2002 graduate of a high school in the District and attended the graduation of his sibling, Doe 7, in 2005 at Elmbrook Church. (Am. Compl., ¶ 45.)

10. Doe 9 is the parent of children who may graduate from a District high school no earlier than 2015. (Am. Compl., ¶ 47.)

HISTORIC USE OF ELMBROOK CHURCH FOR GRADUATION EXERCISES

11. Two of the District's high schools, Brookfield East High School ("Brookfield East") and Brookfield Central High School ("Brookfield Central") have held annual graduation exercises at Elmbrook Church in Brookfield, Wisconsin, for several years. (Am. Compl., ¶ 50.)
12. Elmbrook Church is a non-denominational Christian church. (Am. Compl., ¶¶ 51-52.)
13. Prior to the 2000 graduations, graduation exercises for Brookfield East and Brookfield Central were held in the schools' respective gymnasiums. (Gibson Aff., ¶ 5.)
14. During the 1999-2000 school year, senior class officers at Brookfield Central requested that their graduation exercises be held at Elmbrook Church. (Gibson Aff., ¶ 6.)
15. The 1999-2000 senior class officers wrote the following letter explaining their desire to hold graduation exercises at the Elmbrook Church:

On behalf of the Senior Class of Brookfield Central High School we would like to request your permission to make a few changes with respect to our graduation ceremony that will take place in June, 2000. The nature and the rationale for the changes are as follows:

The first change deals with the starting time for the graduation ceremony.
...

The second change deals with the venue of the graduation ceremony. We request that the site of the ceremony be changed to an auditorium in Elmbrook Church, located on Barker Road. As you know, the graduation ceremony has been held in the Brookfield Central Gymnasium for the past several years. The seating in the Gymnasium is very limited, causing the atmosphere to be very busy and perhaps even chaotic. On top of the crowding, the temperature in the Gymnasium gets extremely hot in the month of June. We feel that the Elmbrook Church will overcome the limitations of space and temperature control, providing ample comfortable seating and an air-conditioned room. The cushioned seats are also much more comfortable in comparison to the hard, wooden bleachers available at school. In addition, there are more than enough parking spaces and excellent handicap facilities available at the church.

We are not making these decisions without the consultation of the entire class. During the Senior Class Assembly held on the first day of the school, a vote was taken to get students' feedback on the proposed change in venue for the graduation ceremony. There were no objections that arose from the proposal. In fact, the students seemed to be very excited about having a comfortable and professional atmosphere during their graduation ceremony-an important turning point in their lives.

Please do consider our proposals with respect to our graduation ceremony. We would be delighted if our requests were taken into serious consideration, so that the graduation ceremony of the class of 2000 will be much more pleasant than it has been in the past. We hope that our advance notice will allow you enough time to make a well-thought decision. We thank you graciously for your time.

(Gibson Aff., ¶ 6, Ex. A.)

16. Then-Principal of Brookfield Central Jim Briscoe approved the students' request.

(Gibson Aff., ¶ 6; LaBonte Aff., ¶ 8.)

17. District Superintendent Matt Gibson also received the students' request. Because he felt the decision where to hold graduation was best left to each school and because he saw no grounds to overrule the decision, he let Principal Briscoe's decision stand. (Gibson Aff., ¶ 6.)

18. Brookfield Central held its graduation exercises at the Elmbrook Church in 2000. Each year since, Brookfield Central has held its graduation exercises at Elmbrook Church. (Gibson Aff., ¶ 6.)

19. Between 2000 and 2002, Brookfield East continued to hold its graduation exercises in Brookfield East's gymnasium. (Gibson Aff., ¶ 8.)

20. However, after observing and experiencing the attributes of the Elmbrook Church venue as a result of Brookfield Central's use of the Elmbrook Church for its graduation exercises, beginning in the 2001-2002 school year, seniors at Brookfield East decided to consider holding their graduation exercises in an alternative venue other than the school's gymnasium. (Gibson Aff., ¶ 9.)

21. Similar to their Brookfield Central counterparts, Brookfield East's seniors considered multiple venues for their graduation exercises, narrowed the choices down to two or three choices, and voted. (Gibson Aff., ¶ 9.)

22. The student vote was advisory. Brookfield East Principal Dr. Joe Schroeder made the final decision based on the students' vote, and each year he approved the seniors' choice of venue. Each year Superintendent Gibson left that decision intact. (Gibson Aff., ¶ 9.)

23. Prior to the fall of 2006, both Brookfield Central and Brookfield East followed this process whereby students held an advisory vote on a location to hold their graduation exercises. (Gibson Aff., ¶ 10; Bowers Aff., ¶¶ 9-10; LaBonte Aff., ¶¶ 8-9.)

24. In each year in which the seniors voted on a venue, the overwhelming majority of students voted in favor of holding the graduation at the Elmbrook Church. (Gibson Aff., ¶ 10; Bowers Aff., ¶ 11; LaBonte Aff., ¶ 10.)

25. In each year in which the seniors voted on a venue, the Principals at the time approved of the students' choice of venue. (Gibson Aff., ¶ 10.)

26. In each year in which the seniors voted on a venue, Superintendent Gibson left the decisions of the Principals intact. (Gibson Aff., ¶ 10.)

27. Beginning in the fall of 2006, the Principal of Brookfield East, Brett Bowers, and the Principal of Brookfield Central, Don LaBonte, met with senior class officers to discuss graduation exercises for the following spring. (Bowers Aff., ¶ 12; LaBonte Aff., ¶ 11.)

28. The senior officers for both high schools were strongly in favor of continuing to hold graduation at the Elmbrook Church. The senior officers did not believe an advisory vote was warranted because of the overwhelming approval of the Elmbrook Church in prior years. (Bowers Aff., ¶ 12; LaBonte Aff., ¶ 11.)

29. Brookfield East's last student vote taken during the 2005-2006 school year resulted in 97% of Brookfield East's seniors voting in favor of the Elmbrook Church. (Bowers Aff., ¶ 11.)

30. Given the students' strong preference and the historic support of the venue, the Principals agreed with the officers and finalized the decision to hold the 2007 graduation at the Elmbrook Church. (Bowers Aff., ¶ 12; LaBonte Aff., ¶ 11.)

31. A similar process to that described in Paragraphs 27 to 30 above has been followed in each school year since the fall of 2006, including for the Class of 2009. (Bowers Aff., ¶ 13; LaBonte Aff., ¶ 12.)

32. Beginning in approximately 2002, the principal at Brookfield East held a parent meeting each fall to discuss graduation venues. In the fall of 2006, only two parents attended the meeting with Principal Brett Bowers. All of those in attendance were in favor of continuing to hold graduation at Elmbrook Church. The meeting lasted approximately 15 minutes. After that meeting, the practice of holding annual parent meetings was discontinued. (Bowers Aff., ¶ 14.)

33. Over the years, multiple school districts and other educational institutions have used Elmbrook Church for their graduation exercises. (Gibson Aff., ¶ 14; Bowers Aff., ¶ 16; LaBonte Aff., ¶ 14.)

34. At various times, District staff have had difficulty scheduling the Elmbrook Church for the high schools' graduation exercises due to the demand for that facility at that time of year. (Gibson Aff., ¶ 14; Bowers Aff., ¶ 16; LaBonte Aff., ¶ 14.)

35. Because of the demand for use of Elmbrook Church and because of the consistent and repeated desire of District seniors, either via an advisory vote or from class officers, to hold

graduation at the Elmbrook Church, the District perceived the need to reserve Elmbrook Church well in advance of the graduations. (Gibson Aff., ¶ 15; Bowers Aff., ¶ 17; LaBonte Aff., ¶ 15.)

36. In recent years, District staff had to reserve Elmbrook Church for the graduation exercises as close as possible to one year in advance of the exercises. (Gibson Aff., ¶ 15; Bowers Aff., ¶ 17; LaBonte Aff., ¶ 15.)

37. Graduation exercises for the two high schools took place this year at the Elmbrook Church on June 6 and 7, 2009. (Am. Compl., ¶ 2.)

NATURE OF GRADUATION EXERCISES

38. Graduation exercises for both Brookfield Central and Brookfield East are conducted by School District personnel. (Gibson Aff., ¶ 22; Bowers Aff., ¶ 26; LaBonte Aff., ¶ 24.)

39. No church official or employee is involved in conducting, presiding over or speaking at the exercises. (Gibson Aff., ¶ 22; Bowers Aff., ¶ 26; LaBonte Aff., ¶ 24.)

40. Programs for the graduation exercises, which list the agenda, speakers and names of the graduates, are handed out by School District personnel or student or parent volunteers, not church officials or employees. (Gibson Aff., ¶ 23; Bowers Aff., ¶ 27; LaBonte Aff., ¶ 25.)

41. The graduation program is the only literature distributed during the graduation exercises. (Gibson Aff., ¶ 23.)

42. The graduation proceeding itself is entirely secular. School District employees speak, secular music is played, diplomas are presented to students, and several students give speeches. (Gibson Aff., ¶ 24; Bowers Aff., ¶ 28; LaBonte Aff., ¶ 26.)

43. The graduation exercises last between one and one-half to two hours. (Gibson Aff., ¶ 24; Bowers Aff., ¶ 28; LaBonte Aff., ¶ 26.)

44. Several signs inside and outside Elmbrook Church designate the space where the graduation is held as the “Auditorium.” (Apr. 20, 2009, Declaration of Alex Luchenitser, ¶ 5, Exs. 15, 17, 18, available at Dkt. 7.)

45. A large cross is affixed to the wall at the front of the Auditorium. (Am. Compl., ¶ 68.)

46. In the last several years, the Elmbrook Church has removed all non-permanent religious banners and symbols that are on the stage in the Auditorium and in the lobby. (Gibson Aff., ¶ 25.)

47. The Church is unwilling to remove or cover up any permanent religious symbols for the School District or any other person or entity renting the Elmbrook Church. (Gibson Aff., ¶ 25.)

48. The District has considered multiple ways to interrupt sight lines to the cross affixed to the wall of the Auditorium, including the placement of screens, sheets, or banners. However, the District has not been able to conceive of a practical way to do so. (Declaration of Matthew W. Gibson in Support of Defendant’s Motion for Summary Judgment (“Gibson Decl.”), ¶ 4.)

49. After the graduation exercises, the Elmbrook Church is open and available for students and their families to take photographs inside and/or outside the facility. (Gibson Aff., ¶ 31; Bowers Aff., ¶ 35; LaBonte Aff., ¶ 34.)

50. The School District also arranges for a professional photographer for graduations for both high schools. The professional photographer takes pictures of each student as the student receives his or her diploma. (Gibson Aff., ¶ 30; Bowers Aff., ¶ 34; LaBonte Aff., ¶ 33.)

51. The professional photographs are taken at a close-up range. None of the religious symbols or materials enumerated in the Plaintiffs' submissions to the Court are visible in the photographs. (Gibson Aff., ¶ 30; Bowers Aff., ¶ 34; LaBonte Aff., 33.)

52. The professional photographs are available for purchase by students and their families. (Gibson Aff., ¶ 30; Bowers Aff., ¶ 34; LaBonte Aff., ¶ 33.)

53. The School District also videotapes each high school's graduation exercises. The video is taken at a mostly close-up range such that few or no religious symbols or materials are visible in the recording. (Gibson Aff., ¶ 32, Ex. B; Bowers Aff., ¶ 36; LaBonte Aff., ¶ 35.)

54. The video captures the entire commencement proceeding, including the officiants, music, speakers, and students receiving their diplomas. (Gibson Aff., ¶ 32, Ex. B; Bowers Aff., ¶ 36; LaBonte Aff., ¶ 35.)

55. The video is broadcast on the District's local cable channel and is available for purchase by the public. (Gibson Aff., ¶ 32; Bowers Aff., ¶ 36; LaBonte Aff., ¶ 35.)

SIZE OF GRADUATING CLASSES AND ATTENDANCE AT GRADUATION

56. In 2009, Brookfield Central's senior class was approximately 360 students. (LaBonte Aff., ¶ 3.) Brookfield East's senior class was approximately 340 students. (Bowers Aff., ¶ 3.)

57. From 2005 to 2009, the graduating class size at the two high schools has ranged from approximately 290 students to approximately 360 students. (Gibson Decl., ¶ 3.)

58. The School District estimates that approximately 2,800 to 3,000 persons, including the graduates, attend graduation exercises each year. (Gibson Aff., ¶ 3; Bowers Aff., ¶ 29; LaBonte Aff., ¶ 27.)

THE HIGH SCHOOL GYMNASIUMS

59. Before construction began on the Brookfield East and Brookfield Central gymnasiums this spring, the capacity of each gymnasium was approximately 1700 persons. Thus, neither gymnasium was sufficient to hold the graduation exercises without having to limit the number of attendees for the ceremony. (Gibson Aff., ¶ 28; Bowers Aff., ¶¶ 31-32; LaBonte Aff., ¶ 29.)

60. If graduation exercises had been held in the gymnasiums, based on the size of the 2009 senior class, the number of persons involved in the graduation exercise itself, and the size of both gymnasiums, the School District would have needed to limit each senior to approximately three (3) guests. (Gibson Aff., ¶ 28; Bowers Aff., ¶¶ 31-32; LaBonte Aff., ¶ 29.)

61. If graduation exercises had been held in the gymnasiums, the School District would also have needed to prohibit high school students and members of the public, other than those who have a ticket, from attending the exercises. (Gibson Aff., ¶ 28; Bowers Aff., ¶¶ 31-32; LaBonte Aff., ¶ 29.)

62. Neither Brookfield Central's nor Brookfield East's gymnasium was air conditioned. (Gibson Aff., ¶ 29; Bowers Aff., ¶ 33; LaBonte Aff., ¶ 32.)

63. The seating in both gymnasiums was limited to folding chairs on the floor and bleacher seating against the walls. (Gibson Aff., ¶ 29; Bowers Aff., ¶ 33; LaBonte Aff., ¶ 32.)

64. The School District did not want to issue tickets to the graduation exercises and thus limit the number of persons its seniors can invite and limit and/or prohibit other students and members of the public from attending the exercises. (Gibson Aff., ¶ 27; Bowers Aff., ¶ 30; LaBonte Aff., ¶ 28.)

CURRENT CONSTRUCTION AND THE NEW FIELD HOUSE

65. In April of 2008, voters in the School District passed a referendum approving a general obligation bond in an amount not to exceed \$62,190,000 for the public purpose of paying the cost of renovating and adding to Brookfield East and Brookfield Central, making related site improvements, and acquiring related equipment. A similar referendum previously failed. (Gibson Aff., ¶¶ 16-17; Bowers Aff., ¶¶ 18-19; LaBonte Aff., ¶¶ 16-17.)

66. As a result of passage of the referendum, Brookfield East and Brookfield Central are being remodeled and are now under construction. (Gibson Aff., ¶ 18; Bowers Aff., ¶ 20; LaBonte Aff., ¶ 18.)

67. The construction includes remodeling the existing gymnasiums and creating a new, ADA-compliant field house with the capacity for 3,500 persons. This capacity will be sufficient to accommodate Brookfield East's and Brookfield Central's graduation exercises without the need to issue tickets for admission to the ceremony. (Gibson Aff., ¶ 18; Bowers Aff., ¶ 20; LaBonte Aff., ¶ 18.)

68. The School District expects construction of the new field house will be sufficiently completed in time for the 2010 graduation. (Gibson Aff., ¶ 19; Bowers Aff., ¶ 21; LaBonte Aff., ¶ 19.)

69. The new gymnasium will be air-conditioned and have ample handicapped seating and parking. (Gibson Aff., ¶ 19; Bowers Aff., ¶ 21; LaBonte Aff., ¶ 19.)

70. The School District anticipates that both Brookfield Central's and Brookfield East's graduation exercises in 2010 and thereafter will be held in the School District's new field house. Thus, the District believes that 2009 was the last year that either high school will hold its graduation exercises at Elmbrook Church. (Gibson Aff., ¶ 20; Bowers Aff., ¶ 22; LaBonte Aff., ¶ 20.)

71. Both of the gymnasiums for Brookfield Central and Brookfield East were under construction in 2009; as a result, the School District could not use either gymnasium to hold graduation exercises in 2009. (Gibson Aff., ¶ 28; Bowers Aff., ¶ 31; LaBonte Aff., ¶¶ 30-31.)

72. As of May 22, 2009, one of the two balconies in the gymnasium at Brookfield East had been demolished. Further demolition was scheduled to occur over the next several weeks. (Bowers Aff., ¶ 31; LaBonte Aff., ¶ 31.) Demolition of the gymnasium at Brookfield Central was scheduled to begin the week of May 25, 2009. (LaBonte Aff., ¶ 30.)

73. Since the gymnasiums have been under construction, parking has been severely limited. (Gibson Aff., ¶ 29.; Bowers Aff., ¶ 33; LaBonte Aff., ¶ 32.)

ATTRIBUTES OF ELMBROOK CHURCH

74. The Elmbrook Church Auditorium has a seating capacity of 3,000 to 3,200. Thus, when the District has used the Church for graduations, the District has not needed to limit the number of guests each senior can invite to the exercises, nor has the District needed to limit the number of other high school students or members of the public who can attend. (Gibson Aff., ¶ 21; Bowers Aff., ¶ 29; LaBonte Aff., ¶ 27.)

75. Elmbrook Church is 4.5 miles from Brookfield Central and 9.5 miles from Brookfield East. (Gibson Aff., ¶ 21; Bowers Aff., ¶ 23; LaBonte Aff., ¶ 21.)

76. Parking at the Church is free and abundant. (Gibson Aff., ¶ 21; Bowers Aff., ¶ 23; LaBonte Aff., ¶ 21.)

77. The Auditorium is air conditioned. (Gibson Aff., ¶ 21; Bowers Aff., ¶ 23; LaBonte Aff., ¶ 21.)

78. The Church facility is fully ADA compliant, including ample handicap parking, modern elevators, equipped and conveniently located restrooms, wheelchair seating available

throughout the Auditorium, and uninterrupted sight lines while graduation is taking place. (Gibson Aff., ¶ 21; Bowers Aff., ¶ 23; LaBonte Aff., ¶ 21.)

79. The padded seats in the Auditorium are more comfortable than the bleachers or metal folding chairs used historically in the gymnasiums of the schools. (Gibson Aff., ¶ 21; Bowers Aff., ¶ 23; LaBonte Aff., ¶ 21.)

80. The Auditorium is equipped with excellent video and audio technology, including two “jumbotron” screens that display images of graduates and speakers before and during commencement. (Gibson Aff., ¶¶ 21, 32; Bowers Aff., ¶¶ 23, 37; LaBonte Aff., ¶¶ 21, 36.)

81. The Church provides uninterrupted sight lines to speakers and graduates from any location in the Auditorium. (Gibson Aff., ¶ 32, Ex. B.)

82. The grounds of Elmbrook Church are landscaped and well-maintained, providing the setting for secular photo opportunities for graduates and their families. (*See* Apr. 20, 2009, Luchenitser Decl., ¶ 3, Ex. 24; ¶ 5, Ex. 9.)

83. The approximate cost to hold the high schools’ graduation exercises in 2009 was \$2,000 per school. The cost in previous years was comparable. (Am. Compl., ¶ 123.)

84. Because of costs of electricity and custodial time, it costs the School District less to hold graduation exercises at the Elmbrook Church than to hold the exercises in any existing District facility. (Gibson Aff., ¶ 12.)

85. Not all of the funds expended for graduation comes from District funds. Some of the costs come from the students themselves. (*See* Apr. 20, 2009, Luchenitser Decl., ¶ 9, Exs. 53, 54, 57.)

86. Each year, senior class officers or District staff considered potential alternative venues to Elmbrook Church for high school graduations. (Gibson Aff., ¶¶ 9, 10, 13; Bowers

Aff., ¶¶ 9-15; LaBonte Aff., ¶¶ 8-13; *see also* Apr. 20, 2009, Luchenitser Decl., ¶ 10, Exs. 82, 83, 84, 85, 94, 96, 97, 106, 107, 117.)

87. No other venue offers the attributes described above for the price that the District pays for the use of the Elmbrook Church facilities. (*See* Gibson Aff., ¶¶ 9, 10, 13; Bowers Aff., ¶¶ 9-15; LaBonte Aff., ¶¶ 8-13; *see also* Apr. 20, 2009, Luchenitser Decl., ¶ 10, Exs. 83, 84, 85, 94, 96, 106, 107, 117; *see also* Dkt. 27, Ex. 143.)

COMPLAINTS

88. In the nine years in which graduations have been held at Elmbrook Church, fewer than 10 individuals have complained to the School District regarding the use of Elmbrook Church. (Gibson Decl., ¶ 5.)

89. The District is aware of only two parents of high school students in the District who have complained in writing to the District. (Gibson Decl., ¶ 6.)

90. Most complaints have come from organizations such as Americans United for Separation of Church and State and the Freedom From Religion Foundation. (Gibson Decl., ¶ 7.)

91. Several other exhibits are on record in this matter containing complaints about the District's use of Elmbrook Church. However, most of those represent multiple communications generated by the same few complainants and/or were from persons other than parents of high school students in the District. (Gibson Decl., ¶ 8.)

SENIOR HONORS NIGHT

92. From at least 2005 to 2009, Brookfield Central held its annual Senior Honor's Night at Elmbrook Church. (Declaration of Don LaBonte in Support of Defendant's Motion for Summary Judgment ("LaBonte Decl."), ¶ 3.)

93. Brookfield East has never held its Senior Honor's Night, a.k.a. Senior Recognition Night, at Elmbrook Church. (Am. Compl., ¶ 119.)

94. None of the Plaintiffs attended Senior Honor's Night at Elmbrook Church. (*See* Am. Compl., generally.)

95. Senior Honor's Night is an occasion to recognize students who receive scholarships or exceed a certain grade point average. District personnel award plaques and other honors, and representatives of community organizations present scholarships. Senior Honor's Night lasts approximately two hours. (LaBonte Decl., ¶ 3.)

96. Senior Honor's Night is held in the Elmbrook Church chapel, which has a seating capacity of around 1,380 people. (LaBonte Decl., ¶ 4.)

97. Approximately 500 to 600 people attend Senior Honor's Night, including students and family members of students. (LaBonte Decl., ¶ 4.)

98. The chapel is a smaller, more intimate space than the Elmbrook Church Auditorium. It has a wood floor, grand piano, and balcony seating. It is air conditioned. (LaBonte Decl., ¶ 5.)

99. Attendance at Senior Honor's Night is entirely voluntary and subject to parental permission. (LaBonte Decl., ¶ 6.)

100. A large number of seniors who are eligible to attend Senior Honor's Night do not attend. Seniors who do not attend Senior Honor's Night receive their plaques or awards at school. (LaBonte Decl., ¶¶ 7-8.)

101. The District intends to move Senior Honor's Night back to Brookfield Central in 2010 when the renovation of the gymnasium is complete. (LaBonte Decl., ¶ 10.)

102. There is no written lease or agreement between the School District and Elmbrook Church for the use of Elmbrook Church's facilities. (Gibson Decl., ¶ 9.)

Dated this 17th day of July, 2009.

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